# UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States	)	
Department of Housing and Urban	)	
Development, on behalf of	)	
Charging Party,	)	
	)	
v.	)	
	)	HUD ALJ No.
	)	FHEO No. 09-09-0598-8
Remi B. During, Victor C. During,	)	
Mario Mascarinas and the Realty One Group, Inc.,	Ú	
	)	
Respondents.	)	
	)	

## **CHARGE OF DISCRIMINATION**

### I. JURISDICTION

On February 11, 2009, Complainant Filed a complaint with the United States Department of Housing and Urban Development ("HUD" of "Department"), alleging that the Respondents discriminated in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 et seq. ("the "Act"), by refusing to rent based on familial status in violation of 42 U.S.C. § 3604 (a).

On September 8, 2009, the Department amended the complaint to address the Respondents' statements indicating a refusal to rent based on familial status in violation of 42 U.S.C. § 3604 (c).

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §3610 (g)(1)-(2). The Secretary of HUD has delegated to the General Counsel (24 C.F.R. § 103.400 (a)(2)(i) and § 103.405), the authority to issue such a Charge of discrimination. The General Counsel has re-delegated to the Regional Counsel the authority to issue such a Charge (73 Fed. Reg. 68441, 68442 (Nov. 18, 2008)), following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), or his or her designee.

The FHEO Region IX Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case based on familial status, and has authorized and

1

directed the issuance of this Charge of Discrimination. See 42 U.S.C. § 3610 (g)(2). HUD's efforts to conciliate the complaint were unsuccessful. See 42 U.S.C. § 3610 (b).

### II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and Determination of Reasonable Cause, Respondents Remi B. During, Victor C. During, Mario Mascarinas and Realty One Group, Inc., are charged with discriminating against Complainant and Aggrieved Person as defined by 42 U.S.C. § 3602 (i) and 24 C.F.R. § 100.20, based on familial status in violation of 42 U.S.C. §§ 3604 (a) and 3604 (c) of the Act as follows:

- 1. It shall be unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status or national origin. 42 U.S.C. § 3604 (a). See also 24 C.F.R. § 100.60.
- 2. It shall be unlawful to make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604 (c). See also 24 C.F.R. § 100.75.
- 3. At all times relevant to this Charge, Respondents Remi B. During and Victor C. During were the owners of the property located at Vegas, Nevada 89128-7327 ("Subject Property").
- 4. At all times relevant to this Charge, Realty One Group, Inc., and its agent, Mario Mascarinas, were the listing agents for the owners of the Subject Property.
- 5. The Subject Property, located in Las Vegas, Nevada, is a four-bedroom, three bathroom, two-story single family home; the Subject Property is approximately 2,406 square feet.
- 6. At all times relevant to this Charge, Complainant ("Complainant") was a single mother of four children, including three minor children.
- 7. At the time of her application to the Subject Property, Complainant had three minor children, ages four, eight and thirteen; Complainant's eldest child did not intend to reside with the Complainant at the Subject Property.
- 8. In December 2008 at the time of her application for the Subject Property, Complainant was in the process of legally adopting three (3) minor children, in addition to her four biological children.

- 9. Since Complainant has four biological children and was also in the process of securing legal custody of three additional minor children at all times relevant to this Charge, Complainant enjoys the protections of the Fair Housing Act's familial status provisions. 42 U.S.C. § 3602 (k); 24 C.F.R. § 100.20.
- 10. Commencing on October 25, 2008, Respondents Victor C. During and Remi B. During entered into an "Exclusive Authorization and Right to Sell, Exchange or Lease Brokerage Listing Agreement" with Respondent Mario Mascarinas, a licensed broker (License No. 36506) with Realty One Group, 9089 S. Pecos Road, #3400, Henderson, Nevada 89074. The "Exclusive Authorization and Right to Sell, Exchange or Lease Brokerage Listing Agreement" gave Realty One Group the exclusive and irrevocable right, commencing on October 25, 2008 and expiring on January 24, 2009, to sell, lease or exchange the Subject Property.
- 11. From November 1, 2008 through December 18, 2008, Rene Alvarez, a licensed real estate broker with the real estate firm of Century 21 located at 1880 E. Warm Springs Rd., Las Vegas, Nevada 89119, acted as Complainant real estate agent in seeking residential rental housing in Las Vegas, Nevada. [Declaration of Rene Alvarez, Paragraph 2.]
- 12. In early December 2008, Complainant and Initially contacted Respondent Mascarinas via telephone in response to the contact information on the for rent sign at the Subject Property. During this initial call, Complainant asked Respondent Mascarinas specific questions about the rent, square footage and number of bedrooms at the Subject Property.
- 13. During their initial call in early December 2008, Respondent Mascarinas advised Complainant that the Subject Property had four bedrooms and inquired about the number of individuals in Complainant's household. Complainant Respondent Mascarinas that she had four biological children and was planning to legally adopt three more children; Complainant advised that her eldest child would not live at the Subject Property.
- 14. During their initial call in early December 2008, Complainant Prequested a Rental Application for the Subject Property. Respondent Mascarinas advised Complainant Phat he did not want to accept the \$50 application fee because he did not believe the owners of the Subject Property wanted to rent to a family with that many children. Respondent Mascarinas did not send the Rental Application pursuant to Complainant's initial request.
- 15. In early December, Respondent Mascarinas faxed a Rental Application to Complainant Complainant Second request for a Rental Application for the Subject Property.
- 16. On December 3, 2008, Complainant seems a letter to Respondent Mascarinas regarding the Subject Property following her review of the Rental Application.

Complainant letter stated, in part, "Upon review of the application, I realized that there are \$700 worth of NONREFUNDABLE fees, the \$50 application (which I have no problem paying) the \$300 NONREFUNDABLE cleaning fee and the \$350 NONREFUNDABLE pet fee. I am willing to put a larger REFUNDABLE deposit than requested \$2,200 (\$1550 as stated on the application plus an additional \$650)." The letter closes, "...I hope we can come to an understanding as I am looking to move in the weekend of 12/27. Please advise if these terms are acceptable to you and/or the owner so that I can submit all the required paperwork and application fee."

- 17. Respondent Mascarinas did not respond to Complainant December 3, 2008 letter.
- 18. On or about December 10, 2009, Rene Alvarez contacted Respondent Mascarinas on Complainant behalf to inquire about the Subject Property. [Alvarez Declaration at Paragraph 5.]
- 19. On or about December 10, 2009, Respondent Mascarinas advised Rene Alvarez that the Subject Property was available for rent. [Alvarez Declaration at Paragraph 6.]
- 20. On December 11, 2008, the Multiple Listing Service ("MLS") Residential Rental listing for the Subject Property, located at states, "Single Family; Detached; Approx. 2406 square feet; four bedrooms; two full bathrooms; one 34 bathroom; rent/month \$1,550."
- 21. On or about December 11, 2008, Complainant completed a Rental Application for the Subject Property located at Nevada 89128.
- 22. Complainant December 11, 2008 Rental Application included the following statement, "Applicant understands that Mario Mascarinas is the leasing agent and representative for the landlord of the premises located at Las Vegas, Nevada 89128 at a monthly rent of \$1,550." The Rental Application referenced a non-refundable \$50.00 application fee; a \$50.00 key deposit and a \$300.00 cleaning fee. [Complainant Fincluded the handwritten word, "Refundable" adjacent to the \$300.00 cleaning fee.]
- 23. Complainant December 11, 2008 Rental Application included the names and ages of her three minor children who would reside at the Subject Property: a son, age 13; a son, age 8; and a daughter, age 4.
- 24. Complainant December 11, 2008 Rental Application referenced a 1997 bankruptcy and included a December 11, 2008 letter of explanation in support of her rental application. Complainant Determines etter provided an explanation for the enclosed credit report that included the following credit scores: Equifax (547).

- TransUnion (511), and Experian (497). Complainant eletter also included contact information for American Property Management, her most recent landlord.
- 25. Complainant December 11, 2008 Rental Application included current earning statements from her employer. At the time of application, Complainant had worked for this employer for one year.
- 26. Complainant pearning statements from her current employer documented a gross monthly income of \$5,166.66 and a net monthly income of \$4,149.05. The proposed rent for the Subject Property was \$1,550; Complainant rent to income ratio was 37.4%.
- 27. Complainant December 11, 2008 letter of explanation also advised that in addition to her three biological children who would reside with her at the Subject Property, she was in the process of legally adopting three (3) siblings through the Department of Family Services in Las Vegas, Nevada. Complainant acknowledged that she may not ultimately be approved to adopt; however, she explained that she would need landlord consent, if approved.
- 28. Complainant December 11, 2008 letter of explanation also included a form from the Clark County Department of Family Services, Foster Care Licensing, addressed to the "Foster Home Licensing Worker," from "Landlord of Foster Parenting Applicant" seeking landlord verification that states, "This is to verify that I am the landlord of who lives at Nevada 89128. I hereby give approval for the premises."
- 29. Complainant December 11, 2008 letter of explanation advised that she wanted to move into the Subject Property on December 27, 2008 and requested an initial eighteen-month lease. Complainant also requested that the landlord consider lowering the rent to \$1,400 a month.
- 30. On or about December 15, 2008, Rene Alvarez hand-delivered Complainant Rental Application packet to Respondent Mascarinas at his office located at 9089 S. Pecos Road, Suite #3400, Henderson, Nevada 89074. [Alvarez Declaration at Paragraph 11.]
- 31. On or about December 15, 2008, when Rene Alvarez hand-delivered Complainant Rental Application to Respondent Mascarinas at his office, Respondent Mascarinas stated, "Oh, I remember her the state of the sign is shown in the lady with about four of five kids? Oh, I think this person applied before; how many kids does she have?" [Alvarez Declaration at Paragraph 12.]
- 32. On or about December 15, 2008, Rene Alvarez witnessed Respondent Mascarinas review Complainant Rental Application for the Subject Property. Following his review of Complainant Rental Application, Respondent

- Mascarinas stated, "I know this person; this is her second time trying to get the property. She's the one with about five or six kids and running a day care." [Alvarez Declaration at Paragraph 13.]
- 33. On or about December 15, 2008, when Rene Alvarez was leaving Respondent Mascarinas' office, Respondent Mascarinas stated, "I do not think that the owners will rent to that many children." [Alvarez Declaration at Paragraph 14.]
- 34. On December 15, 2008 at 11:15 a.m. following his delivery of Complainant Rental Application to Realty One Group, Complainant's Agent Alvarez sent an email to Complainant Rene Alvarez' email stated, "Hello, I spoke with Mario and he has a few questions about your situation. 1) He wants you to confirm that \$1550.00 will be the rent. The owner will not drop rent. 2) He wants to know how many people will occupy the home? He mentioned that you have a Foster Cares (sic) business and the owner is only allowing Maximum 2 additional kids besides your own, making a total odf5 (sic) children. 3) Who will be caring for the children if you have a full time job, any other adults? Please reply ASAP. Thank you." [From @gmail.com to
- 35. On December 15, 2008 at 12:19 p.m., Complainant responded to Agent Alvarez' email, in part, as follows: "Hi Rene, Happy snow day! 1) I am actually quite firm on the \$1,400 a month rent not only based on recent rentals but also based on the fact that the home has been available at least since September and they are losing money every day that it is not rented. 2) Initially it is just 3 of my kids and myself since my oldest child is away at college, has a steady girlfriend and will not be moving back (if all plans hold up), I do not have a foster care business, IF I get approved to adopt the children that I want then it would be an additional 3 children, for a total of 6 children and myself a total of 7 people, a 4 bedroom house is legally apt for 8 people..."
- 36. On December 15, 2008 at 1:33 p.m., Complainant's Agent Alvarez sent an e-mail to Respondent Mascarinas. Mr. Alvarez' email stated, "Hello Mario, I spoke with and she is still firm with \$1400 per month rent. Also, she said that the total amount of children will be 6, 3 of her own and 3 foster kids. The children will be in school through the morning and when she's off work at 2:30 pm, the kids will be in her care." [Email from gmail.com to gmail.com]
- 37. On or about December 17, 2008, Respondent Mascarinas faxed Complainant application packet to Respondent Victor During. The Complainant's application packet included: (1) Rental Application (2) Credit Report; (3) Last three pay stubs; (4) Copy of driver's license; (5) Applicant's letter; (6) Divorce decree; (7) Foster care licensing authorization; and (8) Applicant's realtor email. Respondent Mascarinas' fax cover sheet from Realty One Group also included a handwritten note that states, "Pls review all documents and indicate your decision by signing where applicable. Fax back to me at (702) 898-0906. Thanks."

- 38. On or about December 19, 2008, Respondent Mascarinas advised Rene Alvarez that the owners of the Subject Property, Victor C. During and Remi B. During, would not rent the four-bedroom Subject Property to Complainant ecause she had six children and because the Complainant offered \$1,400/month rent. [Alvarez Declaration at Paragraph 15.]
- 39. On or about December 19, 2008, Rene Alvarez advised Complainant Respondent Mascarinas had informed him that the owners of the Subject Property, Victor C. During and Remi B. During, rejected the Complainant's Rental Application for the Subject Property. [Alvarez Declaration at Paragraph 16.]
- 40. On January 27, 2009, the MLS Change Order for the Subject Property shows a rent reduction from \$1,550 to \$1,500.
- 41. On January 28, 2009 at 11:16 a.m., the MLS listing for the Subject Property shows a monthly rental of \$1,500.
- 42. Although the January 28, 2009 MLS for the Subject Property showed a monthly rent of \$1,500, and submitted a Rental Application for the Subject Property on January 28, 2009 that referenced a monthly rent of \$1,375.
- 43. The January 28, 2009 Rental Application stated that their one minor daughter would reside with them at the Subject Property.
- January 28, 2009 Rental Application included their January 2009 credit report. The credit report included a Chapter 7 bankruptcy (Docket # 08) filed on December 1, 2008 in the U.S. Bankruptcy Court in Las Vegas, Nevada. The credit report also noted "serious delinquency" for each applicant and reflected the following credit scores:

  Equifax (565);

  TransUnion (567), Experian (552) and Equifax (540).
- 45. The January 28, 2009 Rental Application stated that employed as an electrician by his current employer, for two months (since December 2008) at the time of the application. Stated salary at was \$20 per hour.
- 46. The anuary 28, 2009 Rental Application stated that been employed as a secretary with her current employer, for six months at the time of the application.

  was \$11.50 per hour.
- 47. The Yanuary 28, 2009 Rental Application packet did not include earning statements from either from either for the employers in order to document the stated income on the Rental Application.

- 48. The Sanuary 28, 2009 Rental Application stated that a receives a \$20 per hour salary at Based on a 40-hour work week, Mr. undocumented gross monthly income was \$3,200.
- 49. The January 28, 2009 Rental Application stated that it receives an \$11.50 per hour salary at Based on a 40-hour work week, Ms. Sindocumented gross monthly income was \$1,480.
- 50. Based on the anuary 28, 2009 Rental Application, and and had a combined gross monthly income of \$5,040.
- 51. Based on Complainant December 11, 2008 Rental Application, Complainant had a documented gross monthly income of \$5,166.66.
- 52. The January 28, 2009 Rental Application included the following statement, "Applicant understands that Mario Mascarinas is the leasing agent and representative for the landlord of the premises located at Nevada 89128 at a monthly rent of \$1,375."
- 53. On February 2, 2009, the MLS Change Order for the Subject Property showed a final rent reduction from \$1,500 to \$1,375. [Respondent Mascarinas signed the MLS Change Order on January 27, 2009; Respondents Victor During and Remi During did not sign the MLS Change Order until February 2, 2009.]
- 54. On February 3, 2009 at 6:22 p.m., the MLS listing for the Subject Property shows a final rent reduction to \$1,375 per month for the Subject Property. The February 3, 2009 final rent reduction for the Subject Property occurred after the submitted their Rental Application on January 28, 2009.
- 55. On February 14, 2009, Respondents Victor During and Remi During executed a Lease Agreement with and Last Vegas, Nevada 89128. The Lease Agreement included a monthly rent of \$1,375 for the lease term of February 14, 2009 until February 13, 2010.
- 56. The February 14, 2009 Lease Agreement for the Subject Property states that the occupants for the Subject Property includes two adults, and and one minor child.
- 57. Upon information and belief, Respondents Victor C. During and Remi B. During rented the Subject Property two times prior to the February 2009 rental to For the 2½ years prior to the October 2008 listing for the Subject Property, Respondents Victor C. During and Remi B. During rented the Subject Property to a married couple with no children.

- 58. Upon information and belief, Respondents Victor C. During and Remi B. During received five (5) Rental Applications, at various times and various rent prices, during the five month listing period for the Subject Property between October 2008 and February 2009.
- 59. On December 19, 2008, Respondents Durings' stated reason for rejecting Complainant Rental Application was the number of Complainant's children and Complainant of Subject Property for \$1,400 when the Subject Property was currently listed for \$1,550 per month.
- 60. On January 28, 2009, Respondents Victor C. and Remi B. During accepted the Rental Application for \$1,375 although the January 28, 2009 MLS for the Subject Property listed a \$1,500 per month rent.
- 61. Under these circumstances, Respondents Victor C. During and Remi B. During's refusal to rent to Complainant constitutes a violation of 42 U.S.C. § 3604 (a).
- 62. Based on the foregoing circumstances, Respondent Mascarinas' refusal to negotiate with Complainant constitutes a violation of 42 U.S.C. § 3604 (a).
- 63. Based on the foregoing circumstances, Respondent Mascarinas' statements regarding the number of Complainant's children and the owners' preference not to rent to an individual with multiple children constitutes a violation of 42 U.S.C. § 3604 (c).
- 64. In his capacity as a Broker for Respondent Realty One Group, Inc., Respondent Mascarinas was an agent of Respondent Realty One Group and it is vicariously liable for his violation of the Act.
- 65. As a result of Respondents' discriminatory conduct, Complainant suffered damages, including, but not limited to, loss of housing opportunities, emotional distress and substantial inconvenience.
- 66. Respondents' discriminatory conduct denied rental housing opportunities to a family with children and deprived Nevada citizens of living in non-segregated communities.

### III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604 (a) and 3604 (c) of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §3601 et seq.;

- 2. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them from discriminating because of familial status against any person in any aspect of the rental of a dwelling;
- 3. Awards such damages as will fully compensate Complainant including but not limited to actual damages, substantial inconvenience, emotional distress, embarrassment, humiliation, and any and all other damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. §§ 3604(a) and 3604 (c); and
- 4. Assess a civil penalty against Respondents for each violation of the Act that the Respondents have committed pursuant to 42 U.S.C. § 3612 (g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612 (g)(3).

Respectfully submitted

William M. Elsbury

Regional Counsel, Region IX

Jana L. Erickson

Attorney

Office of Regional Counsel-Region IX U.S. Department of Housing and

Urban Development

611 West 6<sup>th</sup> Street, Suite #1311

Los Angeles, California 90017

Tel: (213) 534-2789

Fax: (213) 894-4376

Dated: December 10, 2009